

[Dkt. No. 807]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

IN RE: VALSARTAN
N-NITROSODIMETHYLAMINE (NDMA)
CONTAMINATION PRODUCTS LIABILITY
LITIGATION

MDL No. 2875

Case No. 1:19-md-02875-RBK-KMW

*This document relates to:
Duncan v. Zhejiang Huahai
Pharmaceutical, Co., Ltd., et al.
Case No. 1:20-cv-03321-RBK*

ORDER

THIS MATTER having come before the Court on the Motion of Counsel for Plaintiff Earl Duncan ("Plaintiff's Counsel") and Vivian Duncan [Dkt. No. 807] seeking to substitute Vivian Duncan as surviving spouse of Plaintiff Earl Duncan, as Plaintiff in place of Plaintiff Earl Duncan in this matter pursuant to Federal Rule of Civil Procedure 25(a); and there being no opposition to the Motion; and the Court having considered the submissions; and

THE COURT NOTING that in support of the Motion, Plaintiff's Counsel presents evidence that Plaintiff Earl Duncan died on July 29, 2020 and that Plaintiff's Counsel filed and served a Suggestion of Death on November 3, 2020; and

THE COURT NOTING that Vivian Duncan is the surviving spouse and heir of Plaintiff Earl Duncan, and under Texas law "[i]f the Plaintiff dies, the heirs, or the administrator or executor of such decedent may appear and upon suggestion of such death being entered of record in open court,

may be made plaintiff, and the suit shall proceed in his or their name."

Tex. R. Civ. P. 151; and

THE COURT NOTING that the Motion is governed by Federal Rule of Civil Procedure 25(a), which provides that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1); and

THE COURT FINDING that Fed R. Civ. P. 25(a)(1)'s 90-day timeliness requirement for substitution is satisfied because the Motion was filed on January 28, 2021, which was within 90-days of November 3, 2020, when Plaintiff's Counsel filed and served a Suggestion of Death noting the death of Plaintiff Earl Duncan; and

THE COURT FINDING that Defendants would not suffer any prejudice from this substitution;

Accordingly, IT IS on this **16th** day of **March, 2021**, hereby,

ORDERED that the Motion [Dkt. No. 807] is **GRANTED**. Vivian Duncan as surviving spouse of Plaintiff Earl Duncan is hereby **SUBSTITUTED** in place of Plaintiff Earl Duncan; and it is further

ORDERED that the Clerk of the Court shall amend the case caption accordingly.

s/ Karen M. Williams
KAREN M. WILLIAMS
United States Magistrate Judge

cc: Hon. Robert B. Kugler